

ST 01-0016-GIL 01/30/2001 DELIVERY CHARGES

In general, shipping and handling or delivery charges are includable in the gross receipts subject to tax unless the buyer and seller agree upon such charges separately from the selling price of the tangible personal property which is sold. See 86 Ill. Adm. Code 130.415. (This is a GIL.)

January 30, 2001

Dear Xxxxx:

This letter is in response to your letter dated November 14, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's Web site at www.revenue.state.il.us/legalinformation/regs/part1200.

In your letter, you have stated and made inquiry as follows:

Our firm would like to determine the Illinois Retailers' Occupation Tax treatment of shipping and handling charges for retail mail-order purchases. Therefore, pursuant to 2 Ill. Admin. Code Sec. 1200.120, we are requesting a general information letter from your office which would provide guidance as to whether or not the shipping and handling charges are subject to the Retailers' Occupation Tax, based upon the facts as provided below.

Facts

A retailer ('Seller') sells merchandise primarily via catalogs, and also on the Internet. Seller does not maintain any offices, personnel or property within Illinois. Seller charges its customers 'shipping and handling' charges for orders sent to the customers via common carrier. A majority of orders are placed on the telephone. Some orders are placed over the Internet, and a small percentage are placed by mail. The vast majority of sales are paid for by credit card, although some checks are also received.

Charges for 'shipping and handling' are stated as a single charge on the order form printed in the catalog or shown on the Internet, and on the invoice included with the packages sent to the customers. There is no breakdown of the single charge into separate components for 'shipping' or 'handling.' These charges are calculated solely based upon the retail price of the goods sold. No consideration is given to the weight or dimensions of the goods shipped or to the distance from Seller to the purchaser. Title to the goods passes, in accordance with the Uniform Commercial Code, when the Seller delivers the goods to a common carrier (i.e., f.o.b. shipping point).

Seller's actual charges for shipping packages to its customers cannot be determined until after the order has been placed and either the customer's credit card has been billed or the customer has written a check for the purchase. At the time the telephone order-taker processes the charge, there is no way to determine what the actual shipping charge incurred by Seller will be, or whether the items ordered will be shipped together in one package (at a lower total shipping cost) or separately (generating a higher total actual shipping charge). The actual charges to Seller by the common carriers are based on a complicated formula involving package weight, distance shipped, and consolidation of deliveries. Seller is billed one gross shipping charges per day by each of its carriers, and is not billed on a package-by-package basis.

Seller's Illinois Collection Activities

Seller has been collecting and remitting Illinois Retailers' Occupation Tax on all sales to customers located in Illinois.¹ The base used by Seller for calculating the sales tax to be collected is the retail price of the goods sold plus the entire charge for 'shipping and handling.'

Illinois Law

It is our understanding that charges for handling are subject to Retailers' Occupation Tax in Illinois whether or not they are separately stated. It is also our understanding that transportation and delivery charges are generally considered part of the sales price and an element of cost to the seller, and are not excludible from the sales price in computing the tax. 86 Ill. Admin. Code § 130.415. However, delivery charges that are 'agreed to separately...from the selling price' are not subject to the tax. 86 Ill. Admin. Code § 130.415(b) & (d). The regulation provides the following with regard to delivery charges on mail order sales:

Mail order delivery charges are deemed to be agreed upon separately from the selling price of the tangible personal property being sold so long as the...charges designated as transportation and delivery or shipping and handling are actually reflective of the costs of such shipping, transportation or delivery. To the extent that such charges exceed the costs of shipping, transportation or delivery, the charges are subject to the tax.

86 Ill. Admin. Code § 130.415(d).

The regulation thus provides that shipping and handling charges are included in the tax base 'to the extent' they exceed the actual costs of shipping, transportation or delivery. The Department's position, as set forth in several Private Letter Rulings reviewing fact patterns different from those set out in this letter, appears to be that only the excess over actual shipping charges is subject to the tax. See, e.g., PLR ST-00-0123-GIL (June 30, 2000); PLR ST-00-0059-GIL (Mar. 17, 2000); PLR-ST-99-0264-GIL (Aug. 30,

¹ Arguably, since Seller has no physical presence in Illinois, it cannot be required to collect tax from its Illinois based customers at all. Nonetheless, Seller has been voluntarily collecting the tax from Illinois customers, and for purposes of this request it assumes tax will continue to be collected.

1999); PLR ST-99-0174-GIL (May 18, 1999); PLR ST-99-0146-GIL (May 6, 1999); PLR ST 99-0100-GIL (Mar. 19, 1999); PLR ST-99-0024-GIL (Jan. 7, 1999); PLR ST-99-0004-GIL (Jan. 4, 1999); PLR ST-98-0113-GIL (Apr. 13, 1998); PLR ST-98-0062-GIL (Mar. 9, 1998).

Application of Law to Fact Pattern

As set forth in the facts above, Seller bases its charges on the cost of the goods sold, and not the actual cost of the shipping and handling (or the distance shipped). Since there is no feasible method of determining the portion of the shipping and handling charges that exceeds the actual costs of shipping, transportation and delivery, Seller has been collecting and remitting tax on the combined 'shipping and handling' charge. It cannot charge customers tax on the excess over actual shipping charges, because it currently has no way to determine such an amount. Seller would like to confirm that this procedure is correct.

We were unable to locate any case authority, or statutory or administrative authority, which clearly articulated the proper result when a vendor is unable to determine actual shipping charges at the time the customer pays.. We would be grateful if you could provide a general information letter setting forth the proper result based upon the given fact pattern, preferably with citations to judicial, statutory, or administrative authority, where possible. If any of the authorities relied upon are not readily available to the public, we would appreciate it if you would enclose copies of such authorities with the general information letter .

Thank you for your assistance in this matter. If you have any questions, please call me.

In general, shipping and handling or delivery charges are includable in the gross receipts subject to tax unless the buyer and seller agree upon such charges separately from the selling price of the tangible personal property which is sold. In addition, such charges must be reflective of the costs of shipping and delivery. To the extent that these charges exceed the costs of shipping, they are subject to tax. See 86 Ill. Adm. Code 130.415, enclosed. As a technical proposition, handling charges represent a retailer's cost of doing business, and are consequently always includable in gross charges subject to tax. See the enclosed copy of 86 Ill. Adm. Code 130.410. However, when such charges are stated in combination with shipping charges, they will be nontaxable to the extent the above tests are met.

The best evidence that shipping and handling or freight charges have been contracted for separately from the selling price is a separate contract for shipping and handling or freight charges. A separate listing of freight charges on an invoice, by itself, is insufficient. However, documentation that demonstrates that purchasers had the option of taking delivery of the property, at the sellers' location for the agreed purchase price, or having delivery made by the seller for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice.

Mail order delivery charges are deemed to be agreed upon separately from the selling price of the tangible personal property being sold so long as the mail order form requires a separate charge for delivery and so long as the charges designated as transportation or delivery or shipping and handling are actually reflective of the costs of such shipping, transportation or delivery. See subsection (d) of Section 130.415. If the retailer charges a customer shipping and handling or

delivery charges that exceed the retailer's cost of providing the transportation or delivery, the excess amount is subject to tax.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk
Enc.